

(b) A statement of how you will transfer assets to, and have your liabilities assumed by, the successor institution.

(c) Your plan to retire outstanding equities or convert them to equities of the successor institution.

(d) A copy of the charter application for the successor institution, with any exhibits or other supporting information.

(e) A statement, if applicable, whether the successor institution will continue to borrow from a Farm Credit bank and how such a relationship will affect your provision for payment of debts. The plan of termination must include evidence of any agreement and plan for satisfaction of outstanding debts (including amounts you owe to the FAC because of the termination).

§611.1223 Information statement—contents.

(a) *Plain language requirements.* (1) Present the contents of the information statement in a clear, concise, and understandable manner.

(2) Use short, explanatory sentences, bullet lists or charts where helpful, and descriptive headings and subheadings.

(3) Minimize the use of glossaries or defined terms.

(4) Write in the active voice when possible.

(5) Avoid legal and highly technical business terminology.

(b) *Disclaimer.* Place the following statement in boldface type in the material sent to equity holders, either on the notice of meeting or the first page of the information statement:

The Farm Credit Administration has not determined if this information is accurate or complete. You should not rely on any statement to the contrary.

(c) *Summary.* The first part of the information statement must be a summary that concisely explains:

(1) Which stockholders have a right to vote on termination;

(2) The material changes the termination will cause to the rights of stockholders, borrowers, and other equity holders;

(3) The effect of those changes;

(4) The potential benefits and disadvantages of the termination;

(5) The right of certain stockholders to dissent and receive payment for their existing equities; and

(6) The proposed termination date.

(d) *Remaining requirements.* The rest of the information statement must contain the following:

(1) *Plan of termination.* Describe the plan of termination.

(2) *Benefits and disadvantages.* Provide the following information:

(i) An enumerated statement of the anticipated benefits and potential disadvantages of the termination;

(ii) An explanation of the preliminary exit fee estimate, with any adjustments we require, and estimated expenses of termination and organization of the successor institution; and

(iii) An explanation of the board's basis for recommending the termination.

(3) *Initial board of directors.* List the initial board of directors and senior officers for the successor institution, with a brief description of the business experience of each person, including principal occupation and employment during the past 5 years.

(4) *Bylaws and charter.* Summarize the provisions of the bylaws and charter of the successor institution that differ materially from your bylaws and charter. The summary must state:

(i) Whether the successor institution will require a borrower to hold an equity interest as a condition for having a loan; and

(ii) Whether the successor institution will require stockholders to do business with the institution.

(5) *Changes to equity.* Explain any changes in the nature of equity investments in the successor institution, such as changes in dividends, patronage, voting rights, preferences, retirement of equities, and liquidation priority. If equities protected under section 4.9A of the Act are outstanding, the information statement must state that the Act's protections will be extinguished on termination.

(6) *Effect of termination on statutory and regulatory rights.* Explain the effect of termination on rights granted by the Act and FCA regulations. You must explain the effect termination will have on borrower rights granted in the Act and part 617 of this chapter.

(7) *Loan refinancing by borrowers.* (i) State, as applicable, that borrowers may seek to refinance their loans with the System institutions that already serve, or will be permitted to serve, your territory. State that no System institution is obligated to refinance your loans.

(ii) If we have assigned your territory to another System institution before the information statement is mailed to equity holders, or if another System institution is already chartered to make the same type of loans you make in your territory, identify such institution(s) and provide the following information:

(A) The name, address, and telephone number of the institution; and

(B) An explanation of the institution's procedures for borrowers to apply for refinancing.

(iii) If we have not assigned the territory before you mail the information statement, give the name, address, and telephone number of the System institution specified by us and state that borrowers may contact the institution for information about loan refinancing.

(8) *Equity exchanges.* Explain the formula and procedure to exchange equity in your institution for equity in the successor institution.

(9) *Employment, retirement, and severance agreements.* Describe any employment agreement or arrangement between the successor institution and any of your senior officers (as defined in § 620.1 of this chapter) or directors. Describe any severance and retirement plans that cover your employees or directors and state the costs you expect to incur under the plans in connection with the termination.

(10) *Exit fee calculation.* Explain how the exit fee will be calculated.

(11) *New charter.* Describe the nature and type of financial institution the successor institution will be and any conditions of approval of the new chartering authority or regulator.

(12) *Differences in successor institution's programs and policies.* Summarize any differences between you and the successor institution on:

- (i) Interest rates and fees;
- (ii) Collection policies;
- (iii) Services provided; and

(iv) Any other item that would affect a borrower's lending relationship with the successor institution, including whether a stockholder's ability to borrow from the institution will be restricted.

(13) *Capitalization.* Discuss expected capital requirements of the successor institution, and the amount and method of capitalization.

(14) *Sources of funding.* Explain the sources and manner of funding for the successor institution's operations.

(15) *Contingent liabilities.* Describe how the successor institution will address any contingent liability it will assume from you.

(16) *Tax status.* Summarize the differences in tax status between your institution and the successor institution, and explain how the differences will affect stockholders.

(17) *Regulatory environment.* Describe briefly how the regulatory environment for the successor institution will differ from your current regulatory environment, and any effect on the cost of doing business or the value of stockholders' equity.

(18) *Dissenters' rights.* Explain which equity holders are entitled to dissenters' rights and what those rights are. The explanation must include the estimated liquidation value of the stock, procedures for exercising dissenters' rights, and a statement of when the rights may be exercised.

(19) *Financial information.* (i) Present the following financial data:

(A) A balance sheet and income statement for each of the 3 preceding fiscal years;

(B) A balance sheet as of a date within 90 days of the date you mail the termination application to us, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(C) An income statement for the interim period between the end of the last fiscal year and the date of the balance sheet required by paragraph (d)(19)(i)(B) of this section, presented on a comparative basis with the corresponding period of the previous 2 fiscal years;

(D) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the

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date of the most recent balance sheet presented in the statement; and

(E) A pro forma summary of earnings for the successor institution presented as if the termination had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented under paragraph (d)(19)(i)(D) of this section.

(ii) The format for the balance sheet and income statement must be the same as the format in your annual report and must contain appropriate footnote disclosures, including data on high-risk assets, other property owned, and allowance for losses.

(iii) The financial statements must include either:

(A) A statement signed by the chief executive officer and each board member that the various financial statements are unaudited but have been prepared in all material respects in conformity with GAAP (except as otherwise disclosed) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the institution; or

(B) A signed opinion by an independent certified public accountant that the various financial statements have been examined in conformity with generally accepted auditing standards and included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the institution in conformity with GAAP applied on a consistent basis, except as otherwise disclosed.

(20) *Subsequent financial events.* Describe any event after the date of the financial statements, but before the date you send the termination application to us, that would have a material impact on your financial condition or the condition of the successor institution.

(21) *Other subsequent events.* Describe any event after you send the termination application to us that could have a material impact on any information in the termination application.

(22) *Other material disclosures.* Describe any other material fact or circumstance that a stockholder would

need to know to make an informed decision on the termination, or that is necessary to make the disclosures not misleading.

(23) *Ballot and proxy.* Include a ballot and proxy, with instructions on the purpose and authority for their use, and the proper method for the stockholder to sign the proxy.

(24) *Board of directors certification.* Include a certification signed by the entire board of directors as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director must inform us of the reasons for refusing.

[67 FR 17909, Apr. 12, 2002, as amended at 69 FR 10906, Mar. 9, 2004]

§611.1230 FCA review and approval.

(a) *FCA review period.* We will review a termination application and either give preliminary approval or disapprove the application no later than 60 days after we receive the application.

(b) *Reservation of right to disapprove termination.* In addition to any other reason for disapproval, we may disapprove a termination if we determine that the termination would have a material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose.

(c) *Conditions of final FCA approval.* We will give final approval to your termination application only if:

(1) Your stockholders vote in favor of termination in the termination vote and in any reconsideration vote;

(2) You give us executed copies of all contracts, agreements, and other documents submitted under §611.1222;

(3) You have paid or made adequate provision for payment of debts, including responsibility for any contingent liabilities, and for retirement of equities;

(4) A Federal or State chartering authority has granted a new charter to the successor institution;

(5) You deposit into escrow an amount equal to 110 percent of the estimated exit fee plus 110 percent of the estimated amount you must pay to retire equities of dissenting stockholders